

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

YANDEL CRESPO,

Plaintiff,

vs.

MICHAEL CHERTOFF,

Defendant.

CASE NO. 08CV1222 BTM (BLM)  
ORDER GRANTING IFP AND  
MOTION TO APPOINT COUNSEL

Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §2241. He simultaneously filed a motion to proceed *in forma pauperis* ("IFP Motion") and a motion for appointment of counsel.

The Court has considered Petitioner's declaration in support of his motion to proceed IFP under 28 U.S.C. § 1915 and his motion for appointment of counsel. Petitioner's application to proceed IFP reveals that Petitioner has no money in his prison trust account and no other assets or sources of income. Based on the above, the Court GRANTS Plaintiff's motion to proceed IFP.

Plaintiff also requests appointment of counsel pursuant to 18 U.S.C. §3006A. 18 U.S.C. § 3006A(a)(2)(B) provides that "[w]henver the United States magistrate or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who . . . (B) is seeking relief under section 2241." In deciding whether to appoint counsel, the district court "must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the

1 complexity of the legal issues involved.” Weygandt v. Look, 718 F.2d 952, 954 (9<sup>th</sup> Cir.  
2 1983); Rand v. Rowland, 113 F.3d 1520, 1525 (9<sup>th</sup> Cir. 1997).

3       Upon review of the Petition, the Court concludes that Petitioner has demonstrated a  
4 likelihood of success in challenging his prolonged immigration detention under Zadvydas v.  
5 Davis, 533 U.S. 678, 686-90 (2001); Tijani v. Willis, 430 F.3d 1241 (9<sup>th</sup> Cir. 2005); and  
6 Nadarajah v. Gonzalez, 443 F.3d 1069 (9<sup>th</sup> Cir. 2006). Petitioner alleges that the Department  
7 of Homeland Security has been unsuccessful in obtaining travel documents to his country  
8 of repatriation for over 33 months. If this allegation is correct, Petitioner may be entitled to  
9 relief under the above cases because his detention is prolonged and indefinite. The Court  
10 further notes that Petitioner’s claims are based on a relatively new and evolving area of the  
11 law. The Court therefore GRANTS Petitioner’s Motion for Appointment of Counsel. The  
12 Court appoints Federal Defenders as Petitioner’s counsel in this case.

13       Having reviewed Petitioner’s claims, the Court finds that summary dismissal of the  
14 petition is not warranted at this time. Accordingly, Respondents are ordered to show cause  
15 why the petition should not be granted. Respondents shall file a written return by September  
16 5, 2008. Petitioner may file a traverse by September 26, 2008. This matter shall be  
17 calendared for disposition on October 17 , 2008 at 11:00 a.m.

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19 Accordingly, IT IS ORDERED:

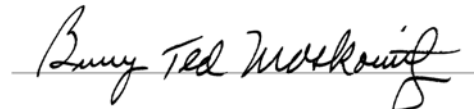
- 20       (1) Petitioner is permitted to prosecute this action without being required to prepay  
21 fees or costs and without being required to post security.
- 22       (2) The Clerk of Court shall file Petitioner’s petition without prepayment of the filing  
23 fee.
- 24       (3) The United States Marshal shall serve a copy of the petition and this Order  
25 upon defendants as directed by Petitioner on U.S. Marshal form 285. All costs  
26 of service shall be advanced by the United States.
- 27       (4) Petitioner shall serve upon respondents, or, if appearance has been entered  
28 by counsel, upon respondents’ attorney, a copy of every further pleading or

1 other document submitted or filed for the Court's consideration. Petitioner shall  
2 include with the original paper to be filed with the Clerk of Court a certificate  
3 stating the manner in which a true and correct copy of any document was  
4 served on respondents or respondents' counsel and the date of service. Any  
5 paper received by a District Judge or Magistrate Judge that has not been filed  
6 with the Clerk or that fails to include a Certificate of Service will be disregarded  
7 by the Court.

8 (5) Federal Defenders is appointed as counsel for Petitioner.

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11 IT IS SO ORDERED.

12 DATED: August 15, 2008

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14 Honorable Barry Ted Moskowitz  
15 United States District Judge  
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